

ACT Relating to Drug Abuse Medicalization, Prevention and Control; and Providing for an Effective Date.

Be it enacted by the People of the State of Alaska:

Section 1. TITLE

This Act shall be known, and may be cited as, the "Drug Abuse Medicalization, Prevention and Control Act of 2000."

Section 2. FINDINGS AND DECLARATIONS

The People of the State of Alaska find and declare the following:

- (1) Alaska's current approach to drug abuse control needs to be changed. We need to medicalize Alaska's drug control policy; recognizing that drug abuse is a costly public health problem and needs to be treated as a disease. Thus drug abuse treatment and prevention must be expanded.
- (2) Alaskans suffer from debilitating diseases such as cancer, glaucoma, multiple sclerosis, and AIDS but cannot have access to all the necessary drugs they need. Allowing doctors to recommend medical marijuana could save victims of these diseases from loss of sight, loss of physical capacity, and greatly reduce the pain and suffering of the seriously ill and terminally ill. At the same time doctor-patient confidentiality and Alaskan's constitutional right of privacy must be maintained.
- (3) We must also legalize and differentiate productive industrial production of hemp from the production of marijuana grown for its THC content and recreational use.
- (4) The drug abuse problems of non-violent persons who are convicted of personal possession or use of illegal drugs are best handled through court supervised drug abuse treatment and education programs. These programs are more effective than locking non-violent offenders up in a costly prison. Over the next two decades millions of dollars can be saved by using mandatory illegal drug abuse treatment and education programs as an alternative to prison.
- (5) Due to the continued costly over-crowding of Alaska's prison system, Alaska contracts to incarcerate inmates in Arizona, while trying to expand existing facilities here. Placing non-violent persons who are convicted of personal possession or use of illegal drugs in court supervised drug abuse treatment and education programs will free up space in our prisons so that there is more capacity to incarcerate violent offenders.
- (6) The tax dollars saved by eliminating prison time for non-violent persons convicted of personal possession or use of illegal drugs should be used for illegal drug abuse treatment and education. Budget reduction will be enhanced by favoring treatment over imprisonment.
- (7) Alaska's courts have held that the threat to Alaskan's constitutional right of privacy posed by drug enforcement efforts is greater than the danger posed by personal home possession and consumption of marijuana.

Section 3. **PURPOSE AND INTENT**

The People of the State of Alaska declare their purposes to be as follows:

- (1) To preserve the privacy rights and privileges of responsible and law-abiding adult citizens of Alaska, as provided in the state constitution.
- (2) To permit doctors to recommend marijuana to treat a disease, or to relieve the pain and suffering of seriously ill and terminally ill patients, without negatively impacting doctor-patient confidentiality.
- (3) To expand drug abuse intervention and treatment programs which divert drug law offenders from prison to abuse treatment, education, and community service.
- (4) To protect the constitutional right of privacy granted by Alaska's Constitution by repealing those measures in Ballot Measure No. 8, effective March 4, 1999 that threaten the right of privacy.
- (5) To allow hemp with minimal content of THC to be grown for commercial and industrial uses.
- (6) To free up space in our prisons and to provide more room for violent offenders.
- (7) To require that non-violent persons convicted of personal possession or use of illegal drugs successfully undergo court supervised mandatory drug abuse treatment programs along with probation.
- (8) To require that non-violent persons currently in prison for personal possession or use of illegal drugs, and not serving a concurrent sentence for another crime, or previously convicted or sentenced or subject to sentencing under any habitual criminal statute in any jurisdiction in the United States, be made eligible for immediate parole and drug abuse treatment, education, and community service.
- (9) To take advantage of the Tenth Amendment of the United States Constitution and allow the people and the State of Alaska full powers in dealing with internal state control of marijuana.
- (10) To enact into law the status of marijuana as previously enacted under statute and currently protected under the Alaska Constitution. The right of privacy shall allow up to four (4) ounces of marijuana for personal use only, in and only in, the privacy of one's home. This is as per laws passed during Governor Hammond's administration and in effect between 1982 and 1990.

Section 4. **DEFINITION**

As used in this Act -

- (1) Minimal means that the percentage of the active ingredient in hemp/marijuana (THC) is so low as to render the plant unfit for producing the effect sought after by recreational users of marijuana.

(2) "correctional facility" means a state prison institution operated and managed by employees of the Department of Corrections or provided to the Department of Corrections by agreement under AS 33.30.031 for the care, confinement or discipline of prisoners;

(3) "debilitating medical condition" means

- (A) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome, or treatment for any of these conditions;
- (B) any chronic or debilitating disease or treatment for such diseases, which produces, for a specific patient, one or more of the following, and for which, in the professional opinion of the patient's physician, such condition or conditions reasonably may be alleviated by the medical use of marijuana: cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis; or
- (C) any other medical condition, or treatment for such condition, approved by the Department of Health and Social Services.

(4) "patient" means a person who has a debilitating medical condition.

(5) The term "non-violent" means any person not convicted of any criminal act which threatened or resulted in physical injury or death, or any criminal use of weapons or dangerous instruments.

Section 5. **DRUG ABUSE MEDICALIZATION, PREVENTION AND CONTROL**

(1) AS 11.71.060 is amended to read as follows:

Sec. 11.71.060. Misconduct involving a controlled substance in the sixth degree. (a) Except as authorized in AS 17.30 or AS 17.35, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA controlled substance or possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance on a public street or sidewalk or on the premises of a public carrier or business establishment or in any other public place;

(2) knowingly possesses any amount of a schedule VIA controlled substance within the immediate control of that person while operating a propelled vehicle;

(3) being under 19 years of age, possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than four ounces containing a schedule VIA controlled substance;

(4) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of four ounces or more containing a schedule VIA controlled substance; or

(5) refuses entry into a premises for an inspection authorized under AS 17.30.

(b) Misconduct involving a controlled substance in the sixth degree is a class B misdemeanor.

(2) AS 11.71 is amended by adding AS 11.71.070 to read as follows:

Sec. 11.71.070. Misconduct involving a controlled substance in the seventh degree. (a) Except as authorized in AS 17.30 a person commits the offense of misconduct involving a controlled substance in the seventh degree if the person

(1) manufactures or delivers, or possesses with intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce of a schedule VIA controlled substance; or

(2) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce containing a schedule VIA controlled substance on a public street or sidewalk or on the premises of a public carrier or business establishment or in any other public place.

(b) Misconduct involving a controlled substance in the seventh degree is a violation and is punishable as authorized in AS 12.55, except that if a fine is imposed it shall not be more than \$100.

(3) AS 11.71.190 (b) is hereby amended to read as follows:

(b) Marijuana is a schedule VIA controlled substance when its THC content is more than the minimal percentage allowed for industrial hemp.

(4) AS 08.80 is amended by adding AS 08.80.355 to read as follows:

Sec. 08.80.355. Sale of Marijuana for medicinal purposes. A pharmacy or pharmacy drug department may sell marijuana recommended by licensed physicians.

(5) AS 08.64 is amended by adding AS 08.64.368 to read as follows:

Sec. 08.64.368. Recommendation or administration of marijuana by physicians.

(a) A physician may not be subject to disciplinary action by the State Medical Board for recommending or administering marijuana to a patient under the physician's care who has authorized the substance for medical purposes.

(b) A hospital or health facility may not interfere with the physician-patient relationship by restricting or forbidding the use of marijuana when recommended or administered by a physician and authorized by a patient.

(6) AS Title 17 Chapter 37 (Ballot Measure 8) is hereby repealed and replaced with the following:

AS 17.37.010 Privileged Medical Use of Marijuana. (a) No patient or primary care-giver may be found guilty of, or penalized in any manner for, a violation of any provision of law related to the medical use of marijuana, where it is proved by a preponderance of evidence that

(1) the patient was diagnosed with a debilitating medical condition;
(2) the patient was advised by his or her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical condition;

(3) the physician gave the patient a written recommendation so stating and kept by the patient with any quantity of medical marijuana; and

(4) the patient and primary care-giver were collectively in possession of amounts of marijuana only as permitted under this section.

(b) To benefit from the protection afforded under this section the patient shall not

(1) engage in the medical use of marijuana in a way that endangers the health or well-being of any person;

(2) engage in the medical use of marijuana in plain view of, or in a place open to, the general public; or

(3) sell or distribute marijuana to any person.

(c) A patient who has not reached the age of majority under AS 25.20 or who has not had the disabilities of a minor removed under AS 09.55.590 to benefit from AS 17.37 has the further requirements that

(1) the physician has explained the possible risks and benefits of medical use of marijuana to the patient and one of the patient's parents or legal guardians residing in Alaska, if any;

(2) this parent or legal guardian adds their permission for this, in writing, to the form stating the physician's recommendation; and

(3) the primary care-giver controls the acquisition of such marijuana and the dosage and frequency of its use by the patient.

(d) No governmental, private, or any other health insurance provider shall be required to be liable for any claim for reimbursement for the medical use of marijuana.

(e) Nothing in this section shall require any accommodation of any medical use of marijuana

(1) in any place of employment;

(2) in any correctional facility;

(3) on or within 500 feet of school grounds;

(4) at or within 500 feet of a recreation or youth center; or

(5) on a school bus.

(7) AS 12.55.085 is amended by adding AS 12.55.085 (g) to read as follows:

(g) If a non-violent defendant is sentenced for the personal possession or use (not sale) of illegal drugs, the sentence imposed must be a suspended imposition of sentence with probation following successful completion of a court supervised mandatory drug abuse treatment or education program. Prison terms or other sanctions may be imposed for those that do not successfully complete both program and probation.

(8) AS 12.55 is amended by adding AS 12.55.081 to read as follows:

Sec. 12.55.081. **Release, Parole and Treatment of Non-Violent Drug**

Offenders. (a) Upon passage of this Act, qualified drug offenders currently in prison shall be eligible for parole with entry into a court supervised mandatory drug abuse treatment or education program.

(b) Such qualification is limited (i) to: non-violent persons; currently in jail; not serving a concurrent sentence for another crime; nor previously convicted or sentenced or subject to sentencing under any habitual criminal statute in any jurisdiction in the United States, (ii) that were sentenced for personal possession or use (not sale) of a controlled substance.

(c) Parole is subject to the usual screening process involving input from concerned parties such as the District Attorneys Office that prosecuted the case. If the Parole Board determines that a prisoner so eligible would be a danger to the general public, that prisoner shall not be released on parole.

(d) Early and continued release on parole is contingent upon entry, successful compliance with, and attainment of the goals of, a court supervised mandatory drug abuse treatment or education program. Payment of costs for participation in the program shall be required to the extent of his or her financial ability.

Section 6. SEVERABILITY

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

Section 7. EFFECTIVE DATE

This Act shall take effect when approved by a majority of the qualified electors voting thereon and immediately upon proclamation thereto by the Lieutenant Governor of the State of Alaska.